IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1245 OF 2004

Jagdish G.Tulsiyani ..Petitioner

Vs.

State of Maharashtra ..Respondents

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Mr.Niranjan Mundergi Advocate for Petitioner
Mr.R.S.Khadapkar A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPT. 26,2005

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner is seeking quashing of proceedings in C.C.No. 529/P/1997 which is pending before the learned Metropolitan Magistrate, 9th Court, Bandra, Mumbai. The said case arises out of C.R.No. 241 of 1996 registered at Khar Police Station. The said case is under Sections 465, 467, 468, 471 and 420 r.w. 34 of IPC.

3. In the present case, the FIR was lodged by one Pushpa Tulsiani who happens to be the mother of the

petitioner. The said complaint was in respect of purchase of flat. The allegations in the complaint are that the petitioner was the son of the complainant. He was looking after the family property. Taking undue advantage of the position by series of misrepresentations, the petitioner had defrauded the complainant and had cheated her.

4. The petitioner told the complainant that she should invest amount in a flat, the cost of which was Rs.6.5 lakhs. He told the complainant that she should invest amount of Rs.5.5 lakhs and he would contribute balance. The petitioner assured and promised the complainant that flat agreements would be ready very shortly in the name of complainant as purchaser and his name would be second joint holder. The petitioner and his father in law Mr.Subani even took the complainant to some place which they represented to be the office where the said flat agreements were signed. The complainant was made to sign several papers. Complainant was informed that builder had already signed documents. Thus, the complainant was made to hand over blank cheques. Subsequently, it was learnt by the

complainant that the Agreement did not contain her name at all.

5. During the investigation of the case, statement of Mukesh Tulsiani i.e. the son of the complainant and brother of the present petitioner, has also been recorded. The statement of Mukesh Tulsiani is on the same lines as that of the complainant.

6. The statements of Mr.Anup Babani the son of the builder and his father Purshottam Babani i.e. builder were also recorded. The statement of Anup Babani shows that the petitioner had approached his father Purshottam through Mr.Sobhani who is the father in law of the petitioner. Petitioner asked the builder to prepare the agreement. Subsequently 'kaccha' agreement was prepared and given to him. That agreement was in the name of the complainant as first purchaser and the petitioner was shown as second purchaser. This agreement was however, not submitted for registration. Mr.Anup Babani has further stated that after about six months the petitioner again came to him and asked him to prepare a new agreement in which he asked to put

his name as the sole purchaser. Accordingly, second agreement was prepared and sent for registration. Mr.Anup Babani has specifically stated that complainant had never visited his house or his office. Thus, the statement of this witness shows that the complainant had never visited the house or office of the builder and that complainant was not actually taken to the builder. From this, an inference can be drawn that complainant was taken somewhere else where her signatures were obtained.

7. The statement of Mr.Purshottam also does not indicate that the signature of complainant was taken in his presence. Thus, this is not a case where the statement of the witnesses and the material on record do not make out any offence as alleged against the petitioner. The material is clearly sufficient to frame a charge. In the complaint there are sufficient averments which prima facie indicate the offences that are alleged in the complaint.

8. Thus, I find that this is not a fit case for

quashing the proceedings. Hence, petition is rejected.

[V.K.TAHILRAMANI,J.]